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EXAMINER
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KRAUSE, ANDREW E

ART UNIT	PAPER NUMBER
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1794

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## **DETAILED ACTION**

### ***Listing of Claims***

1. Claims 17-31 are pending.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 17-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Livermore (WO 98/32336) in view of Kringelum (WO 99/08553).
4. The ground of rejection is maintained as set forth in the previous office action.

### ***Response to Amendment***

5. The declaration under 37 CFR 1.132 filed 11/25/09 is insufficient to overcome the rejection of claims 17-31 based upon Livermore and Kringelum as set forth in the last Office action because: The facts presented are not germane to the rejection at issue, in that the rejection at issue is based upon a combination of references (Livermore and Kringelum). The facts set forth in the declaration are used to attack solely the Livermore reference, and particularly the statement in section 9 of the prior office action concerning the use of “attritional agents”. Applicant concludes that “a person of ordinary skill...would not deduce from Livermore that the aforementioned emulsifiers, in order to act as an attritional agent, should be incorporated in an encapsulate as part of the encapsulate’. It is noted that the suggestion to include emulsifiers such as monoglycerides, diglycerides, triglycerides and DATEM in the bread additive is taken from Kringelum (office action, section 7). The statement from Livermore

regarding attritional agents is included to support the use of emulsifiers in combination with the encapsulated bread additives.

6.

7. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art. *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA). To that end, Livermore teaches encapsulating an enzymatic dough additive with fat (contains triglycerides) so as effect a delay in the action of the enzyme (Pg. 2, Line 20; Pg. 5, Lines 27-29). Kringelgum teaches encapsulating an enzymatic dough additive with fatty substances such as monoglycerides to effect a delay in the action of the enzyme (Pg. 12, Lines 12-13; Pg. 10, Lines 10-22). Therefore, the prior art

teaches two compositions, each of which is effective in delaying the release of an enzyme in the production of a dough product. It would have been obvious to a person of ordinary skill in the art to have combined them to give a third composition that is also useful in delaying the release of the enzyme during dough preparation.

Additionally, Livermore specifically teaches that the enzyme may be released by an attritional agent such as a surfactant (equivalent to an emulsifier) (Page 6, Line 30).

Livermore teaches that in preferred embodiments the attritional agent is an inherent property of the dough which, in fact, suggests that the attritional agent in less preferred embodiments may be found in ways that are not inherent to the dough. As mentioned above, it is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. Therefore, it would have been obvious to a person of ordinary skill in the art to have combined the encapsulates of Livermore and Kringelum and thus provide the attritional agent (emulsifier/surfactant) in the encapsulating layer. As stated in the previous action, the ratio of triglyceride to fat would be determinable by the skilled artisan in order to adjust the release properties for the intended purpose.

8. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections

are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

9. Applicant argues that Kringelum is primarily concerned with the encapsulation of a preserving agent; however, Kringelum also discloses that enzymes may be the encapsulated ingredient (p. 4, lines 19-27).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KRAUSE whose telephone number is (571)270-7094. The examiner can normally be reached on 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANDREW KRAUSE/  
Examiner, Art Unit 1794

/Keith D. Hendricks/  
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